HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

–

WRIT PETITION NO. 10366 OF 1995

BETWEEN:

K. Karuvayya

.....**Petitioner**

And

A.P.S.E.B., Vidyut Soudha,
Hyderabad rep. by its Member Secretary & others.

.....**Respondents**

:: O R D E R::

Counsel for the Petitioner : Shri P. Venkata Ramaswamy

Counsel for the Respondents : Shri Samineni Kishore

Dated: 12.07.2006

In this petition, the petitioner has prayed for quashing of order dated 26-4-1995 whereby penalty of reversion to the lower post was imposed on him.

The petitioner joined the services of Andhra Pradesh State Electricity Board (for short 'the Board') as Lineman. While he was posted in LM, Operation Circle, Srikakulam, a vigilance enquiry was got conducted into the allegations of acceptance of bribe by him from the agricultural consumers for execution of works like extension of L.T Lines and release of agricultural service connections. On receipt of the vigilance report, Superintending Engineer, Operation, Srikakulam (respondent No.3) ordered a regular enquiry against the petitioner and appointed Divisional Engineer, Enquiries, Vijayawada as the enquiry officer. The latter framed the following charge:

> "Sri K.Kuravaiah, Lineman, Hiramandalam, Opn. Circle Srikakulam is reported to have demanded and accepted bribes from the consumers while releasing services and abused his official position by adopting corrupt means of accepting illegal gratifications. This constitutes mis-conduct on the part of Sri K. Karuvaiah, Lineman under APSE Board (Revised) Conduct Regulations.

In his reply, the petitioner denied the charge. He claimed that the allegation levelled against him is false. The enquiry officer submitted report with the finding that the charge levelled against the petitioner of having accepted bribe from the agricultural consumers has not been proved. He, however, observed that the action of the petitioner to accept cash from the consumers and getting the work done through his relatives was highly irregular. For the sake of convenient reference, the findings recorded by the enquiry officer are extracted below:

> " Though it was concluded in the preliminary enquiry that corruption charges against Sri Karuvaiah, Line Man are proved this aspect could not be proved beyond doubt during the enquiry on 05.04.1992 as none of the witnesses examined have deposed in support of paying bribe amounts to Sri

Karuvaiah, Line Man. Therefore, giving benefit of doubt to the delinquent, the charges of corruption are dropped against Sri Karuvaiah, Line Man.

During the Enquiry it was revealed that Sri Karuvaiah, Line Man has been acting for his Father-in-law Sri K. Kameswara Rao, who was assigned works on Chit Agreements. This has come out clearly in the statement of Sri Chintam Simhachalam, where in Sri Karuvaiah has stated that he has paid back the amount of Rs.160/- spent by Simhachalam to him on behalf of Sri Kameswara Rao, Contractor. It was also revealed that majority of works in Hiramandalam area to which Sri Karuvaiah, is incharge as Line Man are assigned to Sri K. Kameswara Rao, Father-in-law of Sri Karuvaiah. I am convinced that Sri Karuvaiah, Line Man has been carrying out the contract works in the name of Sri K. Kameswara Rao, his Father-in-law, which is against the Board's Rules and Regulations.

In the case of Sri Bora Varahalu Naidu, S/o Krishna Murthy, Gulmuru, it is proved that Electricity charges are being demanded from him, even though service was not released to him. The argument of Sri Karuvaiah, Line Man that he is not responsible for demanding the bills cannot be sustained, because the basic information of release of service is expected from him as he is the Line Man in charge of Gulmuru distribution and section Officer is away at Kothuru. The root cause of assigning a service number and demanding C.C. charges in wrong report of Sri Karuvaiah as Line Man of the area. His action has resulted in an avaidable harassment to Sri Varahalu Naidu. Sri Karuvaiah has failed in discharging his duties properly resulting in disrepute the functioning of the Board.

It is also revealed that Sri Karuvaiah, Line Man has been taking money from the consumers for payment of deposits etc. due to the Board, which is highly irregular. This aspect has come to light in the depositions of 1) Sri Pereddi Appa Rao, S/o Narasanna, Gulmuru and 2) Sri Patta Rama Rao, S/o Bodanna, Tunga Tampara. Sri Pereddi Appa Rao

has asserted that he has handed over the money to Sri Karuvaiah, Line Man and Sri Karuvaiah himself admitted that Sri Patta Rama Rao has handed over him Rs.250/-."

Respondent No.2 accepted the enquiry report and passed order dated 19.05.1992 whereby he imposed penalty of stoppage of three increments with cumulative effect on the petitioner.

The petitioner challenged the aforementioned order by filing an appeal before the Chief Engineer (Electricity). During the pendency of appeal, the Chairman of the Board suo motu reviewed the petitioner's case and appointed Superintending Engineer, Enquiries, Hyderabad to make fresh inquiry. The latter submitted report dated 20-8-1994 with the following conclusions:

" In view of the findings set forth in the above paras, the charge of corruption in demanding and acceptance of bribe is held not proved but for the following lapses observed.

i. S.D. and S.C. charges were collected from prospective consumers in cash by Sri K. Karuvaiah, L.M. and obtained D.Ds. and submitted to section office. As an employee of Board, he is not expected to collect cash for what ever reason it might be.

ii. As an employee of Board, when ever any work is executed by his relatives or kith & kin, it should invariably be brought to the notice of his superiors as per conduct Regulations. While his father-in-law executed works under Chit Agreements under his very nose, he failed to inform his superiors about his relationship."

On receipt of the second enquiry report, the Chairman of the Board ordered issue of notice to the petitioner proposing imposition of penalty of reversion to the lower post. A copy of enquiry report was also supplied to the petitioner along with show cause notice dated 07.11.1994. The petitioner submitted representation dated 27.12.1994, wherein he pleaded that the enhancement of the

punishment already imposed is not warranted. He also questioned the decision of the Chairman to get a de novo enquiry conducted through Superintending Engineer (Enquiries Cell), Hyderabad by asserting that there was no warrant for doing so. After considering the representation of the petitioner, the Chairman of the Board confirmed the proposed penalty and Member Secretary of the Board issued order dated 26.04.1995.

The petitioner has questioned the punishment of reversion to the lower rank mainly on the ground of violation of the rules of natural justice. His contention is that when the allegation enumerated in the charge memo has not been proved, the enquiry officer could not have held him guilty of the allegations which did not form part of the charge memo. Another contention raised by the petitioner is that the finding recorded by the enquiry officer is liable to be declared as perverse, because the same is not based on any evidence.

The respondents were served with notice of the writ petition some time in 1995, but no counter was filed till the last date of hearing i.e. 05.07.2006. On that day, learned counsel for the respondents made a request for permission to his clients to file counter-affidavit, but the same was declined with the observation that such a request cannot be entertained after eleven years. However, liberty was given to the learned counsel for the respondents to produce the record of the enquiry.

I have heard learned counsel for the parties and perused the record including the enquiry file produced by Shri Samineni Kishore. A reading of the charge memo issued to the petitioner makes it clear that the only allegation against him was that he had demanded and accepted bribes from the consumers for releasing connection. Both the Divisional Engineer and Superintending Engineer, who conducted inquiries, concurrently held that the

allegation of acceptance of bribe for the purpose of release of connection is not proved against the petitioner. However, they held the petitioner guilty of committing other irregularities. There is nothing on record of the enquiry from which it can be inferred that the charge levelled against the petitioner had been amended or modified and it was decided to proceed against him on the allegation that he had collected cash from the consumers, obtained D.Ds. and submitted the same to the Section Office and had not brought to the notice that the work of releasing connections was got executed through his father-in-law. In this view of the matter, it must be held that, after having recorded a finding that the charge levelled against the petitioner has not been proved, it was not open to the enquiry officer, the disciplinary authority or the Chairman to impose penalty on him by holding that he is guilty of some allegations, which did not form part of the charge memo. If the petitioner had been served with an amended charge memo or he had been informed that the scope of enquiry has been enlarged by the competent authority and he is required to defend himself qua additional charges, he could have adduced evidence to show that the additional charges levelled against him are not well founded. However, the fact of the matter is that neither the charge memo was amended nor he was served with a fresh notice containing additional charge. In this back drop, it was impermissible for the Chairman of the Board to punish the petitioner on the allegation which did not constitute the part of charge memo. In my considered view, without framing a specific charge of having committed irregularities to which a reference has been made in two enquiry reports, the petitioner could not have been visited with penalty of reversion. To put it differently, the punishment of reversion to the lower post imposed on the petitioner by the Chairman of the Board is vitiated due to violation of the rules of natural justice.

The issue deserves to be considered by another angle. Regulation 10(2) of the Andhra Pradesh State Electricity Board Employees' Discipline and Appeal Regulations framed under Section 79(j) and (k) of The Electricity (Supply) Act, 1948 casts a duty on the disciplinary authority to frame definite charge(s) on which enquiry is proposed to be held against the delinquent employee. The charge memo prepared by the disciplinary authority either on its own or by some authorized officer constitutes the foundation of disciplinary action and unless an employee is charged with definite specific misconduct, he cannot be held guilty. The facts of the present case show that the Chairman punished the petitioner on the allegations which did not form part of the charge memo. In other words, he has been punished without framing of a definite charge as per the requirement of Regulation 10 (2) of the Regulations. Therefore, the order of punishment is liable to be declared illegal and quashed.

In view of the above conclusion, I do not consider it necessary to deal with the other points raised by the petitioner for questioning the legality of order dated 26.04.1995.

For the reasons stated above, the writ petition is allowed. Order dated 26.04.1995 is quashed. However, it is made clear that this adjudication shall not, in any manner, adversely affect the order of punishment dated 19.05.1992 passed by Superintending Engineer (Operation), Srikakulam whereby penalty of stoppage of three increments with cumulative effect was imposed on the petitioner.

G.S.SINGHVI, CJ

svs

12.07.2006